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INTERPRETIVE BULLETIN

**The Application of the Campaign Finance Law
to the Use of Governmental Resources
for Political Purposes**

The Office of Campaign and Political Finance (OCPF) periodically issues interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. This bulletin provides general guidance and answers certain frequently asked questions regarding the use of governmental resources for political purposes.

Related interpretive bulletins and memoranda which may be of interest -- and which may be obtained from OCPF -- include: IB-90-02 (Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions), IB-92-01 (The Application of the Campaign Finance Laws to Public Employees and Political Solicitation), IB-92-02 (Extent to which Policy-Making Officials May Act or Speak in Support of or Opposition to Ballot Questions), IB-95-02 (Political Activity of Ballot Question Committees and Civic Organizations' Involvement in Ballot Question Campaigns), IB-95-03 (Use of Public Resources by Elected Officials to Communicate with Constituents or Respond to Criticism), and M-95-06 (Disclosure of expenditures of public resources required under M.G.L. c. 55, § 22A).

I. The Anderson decision

In Anderson v. City of Boston, 376 Mass. 178, 187, 380 N.E.2d 628 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court examined the campaign finance law. The Court concluded that the City of Boston could not use public funds to set up an office "for the purpose of collecting and disseminating information about the impact" of a ballot question. The court stated that **the campaign finance law is "comprehensive legislation" which "preempt[s] any right which a municipality might otherwise have to appropriate funds for the purpose of influencing" the outcome of a ballot question.** 376 Mass. at 185-186 (emphasis added).

The court noted that the absence of any provision allowing governmental resources to be used for such purposes was significant. 376 Mass. 186-188. In particular, the court pointed to section 22A of the statute which requires the treasurer of any city, town or "other governmental unit" which makes a contribution or expenditure or promise to make a contribution or expenditure "in order to influence or



affect the vote” on a question submitted to the voters to file a report disclosing the expenditure or promise. Section 22A specifies that “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes” (emphasis added).

In addition, other sections of the statute, in particular sections 13 through 17 (which prohibit political fundraising by public employees and by anyone in public buildings and also prohibit coercion of public employees and of persons doing business with the commonwealth), “demonstrate a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls.” 376 Mass. at 187. See also section 7 of the statute that provides that no person may, in connection with a nomination or election “receive money or its equivalent, expend or disburse or promise to expend or disburse the same, **except as authorized by this chapter . . .**” M.G.L. c. 55, § 7 (emphasis added).

After analyzing the applicability of the campaign finance law to the case, the court concluded that:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a “hands off” policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote. . .

376 Mass. at 194-195.

II. Frequently Asked Questions

A. Which “governmental agencies” are within the scope of Anderson?

The analysis in Anderson applies to the commonwealth and its “political subdivisions” which use taxpayer or rate payer funds. 376 Mass. at 193. Political subdivisions of the commonwealth include county, regional, and town and city governments. State authorities, e.g., Massachusetts Port Authority and the Massachusetts Turnpike Authority, and state institutions of higher education, are also subject to the restrictions articulated in the case. See § 179 of ch. 655 of the Acts of 1989. In addition, the Anderson decision applies to municipal utilities that rely on fees paid by ratepayers. See AO-95-42. Finally, non-profit organizations, which are supported by state tax revenues, may not use such revenues to support or oppose a candidate or a ballot question. See AO-95-41 and AO-96-25.

B. What are “governmental resources?”

“Governmental resources” include anything that is paid for by taxpayers, e.g., personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. A bulk mail permit is also considered a governmental resource. In addition, a state, county or municipal seal is a governmental resource even if reproduced at private expense.

Even the occasional, minor use of governmental resources for a political purpose is inconsistent with state law and should be avoided.

C. What are "political purposes?"

Chapter 55 was enacted to regulate "**election** financing." Anderson, 376 Mass. at 185 (emphasis added). The prohibition on the use of governmental resources for political purposes applies to all expenditures made to promote or oppose a ballot question or candidate. The prohibition, however, does not extend to expenditures made to discuss policy issues (e.g., the need for new schools) which currently are not but may at some **undetermined** future point become the subject of a ballot question.

In addition, the prohibition does not apply "in connection to . . . issues which are debated in an open forum such as a town meeting." See AO-93-07. Similarly, the statute does not regulate expenditures of public funds made for the purpose of lobbying a legislative body or for other purposes which are not designed to influence voters; e.g., challenging the Attorney General's certification of an initiative petition. See AO-93-36.

D. May public resources be used to distribute any information to voters?

1. May information be distributed to voters commenting on the merits of a ballot question if the information does not advocate a particular vote?

No. Governmental resources may not be used by any person, whether public employee or private citizen, to copy and distribute material to promote or oppose a ballot question ("advocacy" material).

In addition, even if voter information commenting on the substance of a ballot question is intended to be objective and factual ("informational" material), it may not be produced or distributed using public funds. The Secretary of the Commonwealth's Election Division has noted in a joint memorandum issued with OCPF in March 1996 that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from producing such informational material without legislative authority.

Only four municipalities have authority to distribute informational material: Newton (ch. 274 of the Acts of 1987), Cambridge (ch. 630 of the Acts of 1989), Sudbury (ch. 180 of the Acts of 1996), and Burlington (ch. 89 of the Acts of 1998). In addition, there is at least one other exception that we are aware of: M.G.L. c. 43B, § 11, relating to information which may be distributed by a charter commission.

2. When does an expenditure to send out material regarding a matter which may become a ballot question become subject to the campaign finance law?

Once a question has been placed "on the ballot," governmental resources may not be used to distribute informational or advocacy material regarding the ballot question absent specific statutory authority.

A statewide ballot question has been placed "on the ballot" once the question is certified by the Attorney General. In municipal elections, particularly in towns, the provisions of the campaign finance law are generally triggered once a determination is made by the appropriate municipal authority, i.e., the board of selectmen, city council or mayor, to place the question on the ballot. See IB-90-02.

Funds spent prior to a question being "on the ballot" may also be subject to campaign finance law, however, if the funds have been spent to influence the outcome of a potential question. Id. For example, public funds may not be used to prepare materials to be distributed to voters if the materials urge voters to vote "yes" or "no" on an anticipated override ballot question. On the other hand, material which describes

an issue that may or may not at some future time be on the ballot is not subject to the campaign finance law if the material does not reference, or advocate a particular vote in, an anticipated election.

3. Is an expenditure made primarily to influence town meeting subject to the campaign finance law?

No. The campaign finance law does not regulate expenditures made **primarily**¹ to affect the deliberations on a warrant article at town meeting (or a matter before any other deliberative body, e.g., a school committee or city council). See AO-94-37.

Municipal officials may distribute information regarding a warrant article to residents prior to a town meeting, if such distribution is consistent with their official responsibilities and does not specifically advocate for or against a ballot question. The campaign finance law does not prohibit the distribution of material primarily relating to a town meeting warrant article even if it may incidentally influence the vote on a ballot question. To avoid confusion regarding the purpose of materials prepared in connection with a town meeting, municipal officials should ensure that such materials refer **only** to the upcoming town meeting and do not refer to a scheduled or anticipated ballot question or election.

A report summarizing a warrant article pending before town meeting which urges support of the article but **also** urges a vote in or **otherwise makes reference to** a subsequent town election should be prepared and distributed with private funds. Such a report is **presumptively** distributed to influence the election. Expenditures made to distribute such a report must be disclosed by a duly organized ballot question committee or by an existing association, corporation or other organization in accordance with M.G.L. c. 55. Governmental resources should **not** be used for such distribution.

4. A town meeting is scheduled to discuss funding for a proposed school building project. A town meeting warrant article requests an appropriation for the project, which is contingent on approval by the voters of the town at a town election pursuant to Proposition 2 1/2. May the school committee or school building committee use governmental resources to distribute a flyer to residents describing the reasons why the building project is needed and urging support of the warrant article?

Yes, if the information in the flyer **primarily** seeks to influence consideration of the town meeting warrant article. The use of public funds to distribute such a flyer in connection with a town meeting would be inconsistent with chapter 55, however, if the question previously has been placed on the ballot by the selectman prior to distribution and the flyer includes a reference to the election or advocates a vote on the ballot question.

Even if a question has not yet been placed on the ballot a flyer should not be distributed using public resources if it advocates a particular vote in the anticipated election or otherwise refers to such an election. A flyer advocates a vote if it uses language such as "vote for" or "support," together with "election," "ballot question" or similar words or phrases.

¹The office previously advised that "the campaign finance law does not regulate expenditures made **solely** to affect the deliberations on a warrant article at town meeting." The office advised therefore that once a question is placed on the ballot, public resources may not be used to distribute information to town meeting members regarding a warrant article which relates to the same issue which will be considered in an election. As a result of Proposition 2 1/2, however, municipalities frequently have town meeting and, either shortly before or after the town meeting, an election on the same issue. OCPF has concluded that Anderson should not be read to require the stringent standard previously articulated by this office.

There may be some circumstances where the mere mention of an election in such a flyer would not violate the campaign finance law. To avoid confusion regarding the purpose of a flyer, however, a flyer prepared for town meeting should not reference an election.

5. If the facts are the same as given in Question 5, may the town's finance committee use governmental resources to distribute a booklet containing its report and recommendations on the warrant articles?

Yes, if the recommendations are limited in scope to the warrant articles and the content of the booklet would reasonably be seen as primarily providing information in connection with town meeting, not the election. In order to clarify that the finance committee's recommendations are issued in connection with the town meeting, the booklet should not reference a scheduled or anticipated election on an override unless the committee is expressly required to do so by state law.

6. May governmental resources be used to distribute a flyer which does not advocate for a particular position on, or present factual information about, a ballot question or a candidate or candidates, but simply informs people about the time, date and place of a municipal election and urges them to vote?

Yes.

7. If the flyer referred to above in question 6 may be distributed using governmental resources, may the flyer contain a brief title describing the ballot question or the text of the ballot question?

Yes, but extreme care should be taken to avoid the appearance of advocacy. A brief, neutral title identifying the ballot question may be used. For example, the title "school expansion project" would be appropriate. On the other hand, titles which would not be appropriate include "ballot question relating to need for school expansion," or "ballot question addressing school overcrowding problem."

8. How can a school building committee or other public official or group distribute information to voters regarding the substance of a ballot question if governmental resources cannot be used for that purpose?

Both advocacy and informational materials may be distributed to voters if public resources are not used for that purpose. For example, a ballot question committee or parent teacher organization could create and distribute a flyer promoting a school project.

A school building committee could not use governmental resources to develop advocacy or informational material primarily for use by a ballot question committee or parent teacher organization (PTO) seeking to influence voters. A school building committee could, however, produce a summary or other document in accordance with its official responsibilities. See IB-92-02. A PTO or ballot question committee could then use private funds to copy and distribute the document. The PTO or ballot question committee would, however, have to report the expenditures in accordance with the campaign finance law's requirements.

9. Would the prohibition apply to the distribution of copies of a summary or other document, e.g., an architect's report on a proposed new school building, distributed at a public meeting or hearing of the public body regarding an override issue before the election?

No. Governmental resources could be used to produce and distribute a reasonable quantity of the documents at the meeting or hearing if the documents do not advocate a particular vote in an anticipated election or otherwise refer to such an election. In meetings or hearings conducted by a public body, materials prepared by or for the body may be distributed to persons in attendance where such materials are designed to facilitate discussion or where the materials otherwise relate to the agenda of the meeting. Generally, such public documents may not be reproduced using public funds if they are to be distributed at a meeting sponsored or organized by a private group such as a PTO or ballot question committee.

10. An architectural firm has been asked by a school building committee to develop a flyer informing voters of the issues relating to a Proposition 2 1/2 ballot question. The question has been placed on the ballot by the town's board of selectmen. May public funds be used to pay the firm if the flyer is to be distributed after town meeting but before an election?

No. A ballot question committee or private group such as a PTO may, however, pay the architect for the preparation of the flyer. Alternatively, the firm may provide its services free of charge to the municipality. If provided free of charge, the firm must report its expenditure on a Report of Ballot Question Expenditures By Corporation or Association – Municipal Form (Form CPF M22). See IB-90-02. If made to a ballot question committee, the committee must report the receipt of an in-kind contribution from the architectural firm, even though the firm also reports its expenditure on a Form CPF M22.

The above limitations do not apply where a firm provides information, e.g., plans and specifications, in the normal course of business to a school building committee or other public body, if the information is not primarily designed to be distributed to voters.

The information could also be distributed to town meeting members, or residents in a town having an open town meeting, before town meeting, if it primarily seeks to influence consideration of the town meeting warrant article. As previously noted, the information should not reference the election.

E. What can public employees do and say about a ballot question?

Policy-making officials may act or speak out in their official capacity and during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

In order to carry out their official duties, policy-making officials must be able to respond to public inquiries or understand the implications of a ballot question within their area of responsibility. Therefore, they may issue press releases, or prepare factual analyses and other information regarding the subject matter of a ballot question if the subject matter is within their jurisdiction.

Such information, assuming it has **not** been prepared for the purpose of influencing the vote, may be distributed to staff and relevant public officials. In addition, to the extent that such material is a public record, it must be provided to members of the public upon request. The information in turn may be distributed to voters by any person or group at that person's or group's expense without violating the campaign finance law if the person or group complies with the law's reporting and disclosure requirements.

Public employees who are not policy-making officials should not devote time during their workdays to speak or act on behalf of a ballot question. Public school teachers should not ask children to take

literature regarding the substance of a ballot question home from school to give to parents. See AO-94-11.

As previously noted, non-elected public employees are subject to the prohibition on political fundraising. In addition, political fundraising is not allowed in buildings occupied for governmental purposes. See M.G.L. c. 55, § 13-17 and IB-92-01.

F. Can a group organized to support or oppose a ballot question use a room within a public building not to raise funds, but for a meeting or hearing?

Yes, if “equal access” is given to each side. In Anderson, the court stated that “the city’s use of telephones and printed materials provided by public funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200. “Equal access” means that proponents and opponents who request and obtain space for a meeting or hearing must be provided space on the same terms and conditions. “Equal access” does not mean, however, that proponents or opponents must be invited to attend a particular event or be asked to speak at an event. See AO-90-02.

OCPF has also advised that proponents and opponents may be offered the use of certain public services if each side is provided the same opportunity. See AO-88-27 (city may offer mailing labels to candidates if all candidates are given same opportunity and purchase price reflected city’s cost), AO-89-28 (candidates may use city council chamber to announce campaign if all candidates are given same opportunity and reimburse city for out-of-pocket costs) and AO-92-28 (a political rally can be held in a public park if equal access is assured).

III. Privately-funded political committees and other permissible activities

Government officials, public employees or anyone else who wishes to oppose or promote a ballot question may undertake such activity using privately-donated funds which are not raised or solicited by public employees.

A separate ballot question committee should first be established with the clerk of the municipality or with OCPF. This committee may then be used to raise and expend funds to promote or oppose the ballot question. Public employees may not solicit or receive any contribution on behalf of the committee, although they may make contributions and participate in activities of the committee which do not involve fundraising.

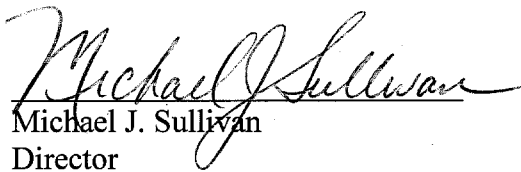
A group may not **solicit or receive** contributions to support or oppose a ballot question until it organizes as a ballot question committee. Where two or more persons “pool” their money to support or oppose a question, e.g., to pay for an advertisement, the persons should first register as a ballot question committee. Such groups are subject to all the reporting and disclosure provisions of M.G.L. c. 55.

Groups such as parent-teacher organizations and local teachers’ unions, which do not raise funds specifically to influence the vote on a ballot question, may make expenditures from existing funds to support or oppose a ballot question, and may make contributions to a ballot question committee. See IB-88-01 “The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees.” Such contributions or expenditures should be disclosed on forms filed with either the local election official or OCPF. See IB-90-02.

IV. Expenditures of Governmental Resources - Remedies

The treasurer of any city, town or other governmental unit which has made expenditures or used public resources to influence or affect the vote on any question submitted to the voters must file a report disclosing such activity. See M.G.L. c. 55, § 22A and M-95-06. Restitution of funds adjudicated to have been spent contrary to law may be required. In addition, any officer of a governmental unit violating either s. 7 or § 22A is subject to criminal penalties.

Finally, any ten persons may file suit to restrain illegal use of public funds at the local level by filing a ten taxpayer suit. See M.G.L. c. 40, § 53. It was a ten taxpayer suit that led to the Anderson decision. At the state level, any 24 taxpayers can file a similar suit. See M.G.L. c. 29, § 63 (for suits at the state level).


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